

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DANIEL WITHERELL,

Plaintiff,

Case No. 23-cv-10153

v.

Honorable Brandy R. McMillion  
United States District Judge  
Magistrate Judge David R. Grand

BRIAN STRICKLIN, *et. al.*,

Defendants.

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**ORDER ADOPTING RECOMMENDED DISPOSITION OF REPORT AND  
RECOMMENDATION (ECF NO. 53), GRANTING DEFENDANTS KIM  
FERRIS AND RICKY COLEMAN’S MOTION TO DISMISS (ECF NO. 46),  
AND DENYING REQUEST TO STAY (ECF NO. 55)**

*Pro se* Plaintiff Daniel Witherall (“Witherall”), an inmate in the Michigan Department of Corrections, brought this civil rights action against Defendants Brian Stricklin, William Borgerding, Kim Farris, Rickey Coleman, Corizon and Wellpath, LLC (“Wellpath”) under 42 U.S.C. § 1983, the Americans with Disabilities Act, and various Michigan state laws. *See* ECF No. 1. Witherall alleges that Defendants have been deliberately indifferent to his serious medical needs. *Id.* This case was originally assigned to the Honorable Sean F. Cox, who issued an order allowing the voluntary dismissal of Defendants Corizon and Wellpath on July 6, 2023. ECF No. 26. On April 2, 2024, this case was reassigned to the undersigned; and consistent

with previous Court orders, the undersigned referred all pretrial matters to Magistrate Judge David R. Grand. *See* ECF No. 6. 37.

On July 19, 2024, Defendants Farris and Coleman filed a Motion to Dismiss and Alternatively a Motion for Summary Judgment on Plaintiff's Failure to Exhaust his Administrative Remedies. ECF No. 46. Despite multiple opportunities, Witherall failed to file a response to that motion. On November 12, 2024, Magistrate Judge Grand issued a Report and Recommendation ("R&R") recommending that the Court grant Defendant Farris and Coleman's Motion. ECF No. 53. At the end of the R&R, Magistrate Judge Grand advised the parties that to seek review of his recommendation, they had to file specific objections with the Court within 14 days of service of the R&R. *See id.* at PageID.370-371.

During the 14 day objection period, Defendants Farris and Coleman filed a Notice of Stay (ECF No. 55), attaching an Amended Order (I) Authorizing the Debtors to (A) Honor and Incur Obligations to Professional Corporations and (B) Obtain New Professional Corporation Contracts, (II) Extending Statutory Protections to Professional Corporations, and (III) Granting Related Relief (ECF No. 55-1) entered by the United States Bankruptcy Court for the Southern District of Texas – relating to a bankruptcy petition filed by Wellpath. The Notice requested that the Court stay this case in its entirety by operation of that bankruptcy order. *See generally* ECF No. 55. Given the pendency of the Motion to Dismiss, the Court took that notice and request under advisement and directed the parties to file any

objections to the R&R by the 14-day deadline. ECF No. 56. No objections were filed. However, Witherall did file a separate Motion Requesting to Correct the Record (ECF No. 57), where he acknowledged that he was not going to respond to Defendant Farris and Coleman's Motion to Dismiss. *See* ECF No. 57, PageID.392.

As neither party has filed any objections to the Magistrate Judge's R&R, and Witherall has acknowledge that he does not intend to respond, the Court is adopting the recommended disposition of the R&R. The failure to object to an R&R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also Ivey v. Wilson*, 832 F.2d 950, 957-58 (6th Cir. 1987) (explaining that a party's failure to timely object to a report and recommendation allows a court to accept the recommendation "without expressing any views on the merits of the magistrate's conclusions"). Similarly, failure to object to an R&R forfeits any further right to appeal. *See Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019) (recognizing that a party forfeits their right to appeal by failing to timely file objections to an R&R).

Accordingly, **IT IS HEREBY ORDERED** that the Magistrate Judge's recommended disposition of Defendants' motion (ECF No. 53) is **ADOPTED**.

**IT IS FURTHER ORDERED** that Defendants Farris and Coleman's Motion to Dismiss or Alternatively Motion for Summary Judgment for Plaintiff's Failure to Exhaust his Administrative Remedies (ECF No. 46) is **GRANTED**.

**IT IS FURTHER ORDERED** that the Request to Stay this case (ECF No. 55) is **DENIED AS MOOT**.

**IT IS SO ORDERED.**

Dated: December 4, 2024  
Detroit, Michigan

s/Brandy R. McMillion  
BRANDY R. MCMILLION  
United States District Judge